IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

Crl.MC.No. 3753 of 2006()

CRL.M.P.1905/06 IN CRL.M.C.2220/05 OF SESSIONS COURT, THIRUVANANTHAPURAM

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PETITIONER: ADDL. 4TH COUNTER PETITIONER

MARY DOLLY @ SARALA @ JESSY,
D/O. MARRY, KALLAMPOTTAVILA VEEDU,
VATTIYOORKAVU, VATTIYOORKAVU P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS: STATE & PETITIONER & COUNTER PETITIONER 1 TO 3

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. MARY JUDITH MANUEL,
NO.6, PRASANTH, KALINA, SANTHA CRUZ, MUMBAI,
HAVING ALSO RESIDING AT MANU VILLA,
VR.P.NO.9/219, PERINGAMMALA, THIRUVANANTHAPURAM.

3. VIJAYAN, S/O. GOPALAKRISHNAN,
PUTHUVAL VEEDU, MADHAVAPURAM,
KADAKAMPALLY VILLAGE, THIRUVANANTHAPURAM.

4. THE DEPUTY SUPERINTENDENT OF POLICE,
CBCID, SPECIAL WING FOR COUNTERFEIT CASES,
KESAVADASAPURAM, THIRUVANANTHAPURAM.

5. THE SUB INSPECTOR OF POLICE,
MEDICAL COLLEGE POLICE STATION,
THIRUVANANTHAPURAM.

R1, 4 & 5 BY PUBLIC PROSECUTOR SRI. M.S. BREEZ
R2 BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 14/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3753 of 2006

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Dated this the 14th day of June, 2007

O R D E R

The facts of the case are interesting. The petitioner claims to be the wife of one deceased Manuel Poulose. The second respondent claims that she is and the petitioner is not the legally wedded wife of the said Manuel Poulose and the petitioner is only a maid servant who lived with Manuel Poulose towards the end of his life.

2. There were disputes between the parties. It is unnecessary for me to narrate the details of such disputes. After the death of Manuel Poulose, an anticipatory bail application was filed on behalf of the petitioner and her son by another person by name Vijayan. Along with that application, certain documents were produced, including a Promissory Note, which is the bone of the contention in this petition. That Promissory Note was allegedly executed by one Manuel Fernandez in favour of deceased Manuel Poulose.

3. The anticipatory bail application was not pressed. The documents, including the Promissory Note, lie in the custody of the Sessions Court, Trivandrum. It is kept in safe custody, it is submitted.

4. The Promissory Note is dated 16.3.2005. It is for an amount of Rs.10 Lakhs. It is stipulated in the instrument that payment has to be made within a period of six months, it is submitted.

5. The second respondent herein went before the learned Sessions Judge with the present application. The prayer, inter alia, was that the Promissory Note in question may be released to the second respondent. She asserted that she was one of the legal heirs of deceased Manuel Poulose and in that capacity had a right to file a suit on the strength of the Promissory Note against the said Manuel Fernandez. Unless the Promissory Note was returned to her, she will not be in a position to file the suit. It was hence prayed that the Promissory Note may be returned to the second respondent along with other documents.

6. The application was opposed by the petitioner before the learned Sessions Judge after getting herself impleaded in the petition. The petitioner or one Vijayan, who filed the anticipatory bail application on behalf of the petitioner, did not make any claim for return of the Promissory Note to them. The petitioner resisted the claim for release of the Promissory Note to the second respondent on the ground that not she, but the petitioner is the legal heir of the deceased Manuel Poulose. The learned

Sessions Judge, by the impugned order, directed that the Promissory Note be released to the second respondent to enable her to file a suit.

7. The petitioner claims to be aggrieved by that order. According to the petitioner, the petitioner had produced the documents and it could be returned only to her or the person who filed the anticipatory bail application on her behalf. It could never be returned to the second respondent. The learned Sessions Judge erred grossly in directing release of the Promissory Note to the second respondent. That order may be set aside. This in short is the plea.

8. I have considered all the relevant inputs. It is submitted that an investigation by the Crime Branch is in progress into the allegations raised against the petitioner regarding the manner in which the property of deceased Manuel Poulose was dealt after his death. That investigation is not complete yet.

9. Having considered all the relevant inputs I am satisfied that appropriate directions can be issued in the matter, which will satisfy the interests of both parties. Handing over of the original documents produced by another to the second respondent need not be resorted to. At th same

time, the second respondent's right, if any, to file a suit claiming amounts due under the Promissory Note can, of course, be protected.

10. This Crl.M.C. is accordingly allowed. The following directions are issued.

(1) The petitioner or the second respondent may apply for certified copies of the Promissory Note in the custody of the Sessions Court, Trivandrum. The learned Sessions Judge shall continue to retain the same in custody, but shall forthwith issue certified copies of the same to the petitioner and the second respondent, if they apply for it.

(2) The petitioner or the second respondent may, if they so choose, initiate appropriate proceedings for recovery of the amount due under the Promissory Note. It shall be open to them to request the civil court concerned to call for the original document kept in the custody of the Sessions Court. The learned Sessions Judge shall, in the event of such requisition from the civil court, act accordingly.

(3) Considering the urgency of the matter, I direct that copies of the Promissory Note must be issued to the petitioner or the second respondent, if they apply for the same, as expeditiously as possible, at any rate, within a

period of three days from the date of applications by treating them as emergent applications.

(R. BASANT)
Judge

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